

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A24-0403

A24-0831

Gracelyn Trimble,
Plaintiff,

vs.

Dalvin Cook,
Respondent,

Daniel Cragg, et al.,
Appellants.

Filed December 2, 2024
Affirmed in part and reversed in part
Larkin, Judge

Dakota County District Court
File No. 19HA-CV-21-3418

Janel M. Dressen, Kathryn E. Campbell, Anthony Ostlund Louwagie Dressen & Boylan
P.A., Minneapolis, Minnesota (for respondent)

Kelly A. Putney, Christopher R. Morris, James C. Kovacs, Bassford Remele, P.A.,
Minneapolis, Minnesota (for appellants)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Harris,
Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In these consolidated appeals, appellant-attorneys argue that the district court erred by sanctioning them for publicly filing a memorandum of law and by disqualifying them and their law firm from serving as trial counsel. We affirm in part and reverse in part.

FACTS

Plaintiff Gracelyn Trimble retained appellants Daniel Cragg, Anne St. Amant, and Eckland & Blando LLP to represent her in a lawsuit alleging personal-injury claims against respondent Dalvin Cook, a former football player for the Minnesota Vikings. Cook brought a defamation counterclaim against Trimble, which stemmed from her personal-injury claims. He later amended his counterclaim against Trimble, asserting that Trimble and appellants had disclosed false statements to the media, but Cook did not add appellants as defendants. Cook also sued Trimble and appellants in a separate action in Hennepin County.

The parties reached an agreement concerning the confidentiality of certain documents and information, and the district court issued a protective order limiting disclosure of those materials. The protective order allowed a party to designate material as confidential, and it set forth a process to challenge such designations.

Following discovery, Trimble moved for summary judgment, arguing, in part, that she could not be held liable for appellants' act of providing the complaint to the media and that appellants' actions were protected by absolute privilege because the statements made to the media consisted of the allegations contained in the complaint. In denying summary

judgment, the district court concluded, in part, that the statements at issue were not made by an attorney, and therefore absolute privilege did not apply. The court stated, “The case before the [c]ourt involves [Trimble] and *not* [Trimble’s] counsel.”

After the court denied summary judgment, Cook presented a settlement proposal to Trimble marked “**RULE 408 CONFIDENTIAL SETTLEMENT COMMUNICATION.**” Days later, Cook made a similar offer, again marked “**RULE 408 CONFIDENTIAL SETTLEMENT COMMUNICATION.**” According to Cook, attorney Cragg indicated an intent to use the settlement communications as evidence at trial. Cook filed a motion in limine, with a memorandum filed under seal, to prohibit Trimble from using the settlement negotiations as evidence.

A week later, appellants publicly filed a memorandum of law opposing Cook’s motion in limine. The memorandum described portions of Cook’s settlement offer. The district court restricted access to appellants’ memorandum. However, before court administration could seal the filing, the media obtained it and published articles describing Cook’s confidential settlement proposals.

Cook moved the district court to sanction appellants for the public filing and to disqualify appellants from serving as trial counsel for Trimble. The district court had appointed a special master to “hear and issue decisions regarding all discovery and non-dispositive disputes between the parties.” The special master granted Cook’s motion to disqualify appellants from serving as trial counsel and granted Cook’s motion for sanctions against appellants.

Trimble moved to modify the special master's order. On February 12, 2024, the district court affirmed the special master's order, denied Trimble's motion to modify, and directed the special master to determine the amount of sanctions. The special master directed appellants to pay respondent \$20,000 in attorney fees. The district court later entered judgment.

Through separately filed appeals, appellants challenge the sanctions and disqualification decisions.

DECISION

I.

Appellants contend that the district court erred by sanctioning them for publicly filing their memorandum of law in opposition to Cook's motion in limine. The sanctions originated in a proceeding before the special master. The district court's order appointing the special master granted authority "to hear and issue decisions regarding all discovery and non-dispositive disputes between the parties in this case." The parties in this case were Trimble and Cook; appellants were not parties. However, the appointing order also authorized the special master to "*recommend . . . sanctions against a nonparty,*" such as appellants. (Emphasis added.) Thus, the sanctions decision that is before us for review is the district court's ultimate decision to adopt and order the special master's recommended sanctions. See Minn. R. Civ. P. 53.07(c)-(d) (stating that the district court must generally review de novo objections to a special master's recommended findings and legal conclusions). As to the recommended sanctions, the special master stated:

[Cook's] motion for sanctions is GRANTED. The statements made by [Trimble's] lawyers in the filing of July 18, 2023, are not protected by the litigation privilege. The motion for an award of attorney fees is similarly GRANTED. [Cook] shall have thirty (30) days from the date of this order to file an affidavit of attorney fees pursuant to Rule 119.

Financial Sanction

Appellants argue that the district court erred by imposing a financial sanction in the form of attorney fees.

In adopting the special master's recommendation for that sanction, the district court stated that the special master's decision to issue sanctions was "affirmed" and that the special master's "decision as to the amount of the sanctions shall be final." The special master found that appellants "intentionally and inappropriately filed the confidential settlement communications as a public document in [their] opposition to [Cook's] motion in limine." The special master also found that appellants' filing mischaracterized the settlement offer. In affirming the special master, the district court found that appellants intentionally made their public filing "fully aware that the documents it described in great detail [were] labeled as confidential settlement discussions."

Although the record shows that the two settlement letters were marked "**CONFIDENTIAL**,"¹ the district court stated that it was "not inclined to find these

¹ Appellants assert that the settlement communications were not within the scope of the protective order because not every page was marked as confidential. Each communication consisted of a two-page letter. Each letter was clearly marked "**RULE 408 CONFIDENTIAL SETTLEMENT COMMUNICATION**" on the first page. The second page of the first letter contained approximately two lines of text and a signature block, and the second page of the second letter contained only one line of text and a signature block.

documents are classified as confidential under the [p]rotective [o]rder.” But the district court effectively found that appellants acted in bad faith by ignoring the confidential designation on the face of each letter, instead of challenging that designation under the process set forth in the protective order. Essentially, the district court’s order indicates that although appellants may not have violated the express terms of the protective order, they violated its spirit.

District courts “possess inherent authority to impose sanctions,” including attorney fees. *Peterson v. 2004 Ford Crown Victoria*, 792 N.W.2d 454, 462 (Minn. App. 2010) (quotation omitted). “Attorney fees may be an appropriate sanction when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” *Id.* (quotation omitted). A finding of bad faith is necessary before awarding attorney fees under the court’s inherent authority and must be identified and supported by the record. *Id.* We review a district court’s imposition of sanctions under its inherent authority for abuse of discretion. *Id.* at 461-62.

Cook moved for sanctions, in part, based on the court’s “inherent powers.” The special master seemingly relied on inherent authority in imposing sanctions: he acknowledged the safe-harbor provision under Minn. R. Civ. P. 11 but stated that a court is “not required to prescribe any safe harbor when it acts under its inherent authority or on its own initiative.” The district court implicitly adopted the special master’s reliance on inherent authority.

On this record, the district court’s imposition of a sanction in the form of attorney fees was justified under its inherent authority, and the sanction was not an abuse of discretion.

Litigation-Privilege Sanction

Appellants argue that the district court erred “to the extent [that] it affirmed by implication a statement by the special master regarding litigation privilege, which violates Minnesota law.” Appellants’ briefing on this issue questions whether the district court did in fact adopt and affirm the special master’s sanctions determination that “the statements made by [Trimble’s] lawyers in the filing of July 18, 2023, are not protected by the litigation privilege.” Appellants note:

In its order affirming the special master’s decision, . . . the district court actually *made no mention at all of litigation privilege*. Instead, the order focused entirely on the propriety of Rule 11 sanctions, as well as disqualification of [appellants]. Perhaps the district court did not intend to even express a view as to whether the special master was right or wrong in declaring that the litigation privilege did not apply. Or perhaps the district court believed that the special master got it wrong as to litigation privilege, just as it concluded with respect to the special master’s mistaken application of the protective order. But the issue was certainly raised, repeatedly, in the record, and is properly a subject of this appeal.²

(Emphasis added.)

Like appellants, we question whether the district court intended to affirm the special master’s ruling regarding the application of the litigation privilege. In explaining why it

² We agree that the litigation-privilege issue is properly before us in this appeal and reject Cook’s argument to the contrary.

“affirmed” the special master’s ruling without modification, the district court never mentioned the litigation-privilege ruling. In addition, the district court’s final statement that the special master’s “decision to issue sanctions is affirmed and the [s]pecial [m]aster’s decision as to the amount of the sanctions shall be final” suggests that the district court’s order adopting the special master’s recommended sanctions is limited to financial sanctions. Under these circumstances, it is unclear whether the district court adopted and ordered the special master’s litigation-privilege recommendation and if so, its reasons for doing so.

The extent of the special master’s litigation-privilege recommendation is also unclear. In moving for sanctions based on appellants’ public filing, Cook argued that the statements in appellants’ publicly filed memorandum were “not protected by the litigation privilege” because appellants’ actions constituted litigation misconduct. In opposing the motion for sanctions, appellants argued that their statements in the public filing were protected by absolute privilege. *See Mahoney & Hagberg v. Newgard*, 729 N.W.2d 302, 309 (Minn. 2007) (stating that “absolute privilege protects witnesses from lawsuits based on statements made during judicial proceedings”).

The special master’s memorandum supporting its sanctions recommendation does not analyze application of the litigation privilege or explain why it determined that disallowance of the privilege was an appropriate sanction. Because the special master did not explain his recommendation, it is not clear to us whether the special master merely concluded that the litigation privilege did not protect appellants from the imposition of financial sanctions, or whether the special master intended to impose a sanction disallowing

appellants from relying on the litigation privilege to avoid liability in any lawsuit by Cook alleging defamation, such as Cook’s separately pending defamation suit against appellants in Hennepin County District Court.³

As to rejection of the litigation privilege as a defense to Cook’s request for financial sanctions, we discern no abuse of discretion for the reasons that follow.

As a matter of public policy, some communications made in the course of a judicial proceeding are protected by absolute privilege and cannot form the basis for a defamation suit, though “[t]he absolute privilege rule is confined within narrow limits.” *Matthis v. Kennedy*, 67 N.W.2d 413, 417 (Minn. 1954). The privilege provides a defense to a civil suit alleging libel or slander. *Id.* at 416-17; *see Mahoney*, 729 N.W.2d at 306 (stating that the privilege is applicable “in a defamation lawsuit”). Appellants do not cite authority indicating that the litigation privilege is a defense to something other than a civil claim, that is, they cite no authority for the proposition that the litigation privilege protects a party from sanctions. Indeed, appellants’ briefing refers to “centuries of clear case precedent holding that litigants are not permitted to *sue* opposing counsel based on pleadings and statements made in connection with court proceedings.” (Emphasis added.) And, our research does not reveal precedential authority indicating that the litigation privilege can be used as a defense to a sanctions motion. In fact, one state supreme court has said that

³ Cook advocates for this interpretation, arguing that the special master “awarded as a sanction the ruling that the litigation privilege did not apply to [appellants’] statements and improper public filing.”

“the privilege does not shield attorneys from their own wrongdoing.” *Bassichis v. Flores*, 189 N.E.3d 640, 648 (Mass. 2022)

In sum, we are not persuaded that rejection of the litigation privilege as a defense to financial sanctions was an abuse of discretion. See *Peterson*, 792 N.W.2d at 461-62 (applying abuse of discretion standard to sanctions ruling).

However, it is not clear to us that the special master intended to limit its litigation-privilege sanction in that manner. In addition to stating that “[t]he statements made by [Trimble’s] lawyers in the [publicly filed memorandum] are not protected by the litigation privilege,” the special master also stated:

[Cook] has made a preliminary showing that [appellants’] conduct has caused NFL contract issues for [Cook], . . . has caused unnecessary litigation costs in bringing this motion and the motion in limine discussed below, and has resulted in harassment and further damage to [Cook’s] livelihood. Therefore, [Cook] *is entitled to bring these new defamation claims before the [c]ourt and prove the damages caused by [appellants’] misconduct.*

(Emphasis added.)

The italicized text suggests that the special master recommended a sanction preventing appellants from raising the litigation privilege as a defense to defamation claims that Cook might bring against appellants. If that was the special master’s intent and the district court adopted that unexplained sanction, the district court erred in doing so.

Again, we review the district court’s imposition of a judicial sanction for an abuse of discretion. “The task of determining what, if any, sanction is to be imposed is implicated by the broad authority provided the [district] court.” *Patton v. Newmar Corp.*, 538 N.W.2d

116, 119 (Minn. 1995). And a nonmonetary sanction may include “an order precluding the litigation of certain claims or defenses.” *Uselman v. Uselman*, 464 N.W.2d 130, 145 (Minn. 1990) (quotation omitted), *superseded by statute on other grounds as recognized in Radloff v. First Am. Nat. Bank of St. Cloud*, 470 N.W.2d 154, 159 (Minn. App. 1991), *rev. denied* (Minn. July 24, 1991). But we are influenced by the importance of the litigation privilege, which is also referred to as “absolute privilege.” Absolute privilege is explained as follows:

Statements, even if defamatory, may be protected by absolute privilege in a defamation lawsuit if the statement is (1) made by a judge, judicial officer, attorney, or witness; (2) made at a judicial or quasi-judicial proceeding; and (3) the statement at issue is relevant to the subject matter of the litigation. *When absolute privilege applies, the speaker is completely shielded from liability for her statements, even statements that are intentionally false or made with malice.*

Mahoney, 729 N.W.2d at 306 (emphasis added) (citation omitted).

The purpose of the privilege is as follows:

These “absolute privileges” are based chiefly upon a recognition of the necessity that certain persons, because of their special position or status, should be as free as possible from fear that their actions in that position might have an adverse effect upon their own personal interests. To accomplish this, it is necessary for them to be protected not only from civil liability but also from the danger of even an unsuccessful civil action. To this end, it is necessary that the propriety of their conduct not be inquired into indirectly by either court or jury in civil proceedings brought against them for misconduct in their position. *Therefore the privilege, or immunity, is absolute and the protection that it affords is complete.*

Bol v. Cole, 561 N.W.2d 143, 148 (Minn. 1997) (emphasis added) (quoting Restatement (Second) of Torts § 584, at 243 (Am. L. Inst. 1977)).

Given the importance of the litigation privilege and absolute immunity, a district court abuses its discretion by disallowing reliance on the privilege as a sanction without explaining its decision. *Cf. Gilbert v. State*, 2 N.W.3d 483, 487-88 (Minn. 2024) (“[W]here the State has properly asserted the *Knaffla* rule, a district court abuses its discretion when it fails to make an explicit determination that a claim is not procedurally barred under *Knaffla* and fails to provide a sufficient explanation supporting such a determination before granting the petitioner postconviction relief.”).

In sum, to the extent the district court ordered that the litigation privilege was not a bar to its imposition of a financial sanction in the form of attorney fees, we affirm the district court’s ruling. But to the extent the district court imposed a sanction preventing appellants from relying on the litigation privilege as a defense to civil claims Cook might bring against appellants based on appellants’ statements in their publicly filed memorandum, we reverse the district court’s ruling.

II.

Appellants contend that the district court erred in disqualifying them from serving as trial counsel for Trimble.

Cook moved to disqualify appellants from “serving as trial counsel,” arguing that appellants were “necessary witnesses” in the defamation case and were therefore disqualified under Minn. R. Prof. Conduct 3.7. The special master granted the motion. In affirming the special master, the district court determined that Cragg and St. Amant were

necessary witnesses in the defamation case and that Cragg, St. Amant, and their law firm were disqualified under Minn. R. Prof. Conduct 1.7 because of a conflict of interest.

A district court's decision regarding disqualification of counsel is reviewed for an abuse of discretion. *State by Swanson v. 3M Co.*, 845 N.W.2d 808, 816 (Minn. 2014). "A district court abuses its discretion when it bases its decisions on an erroneous view of the law or when it renders a decision that is contrary to the facts in the record." *Id.* We review the district court's interpretation of a rule of professional conduct de novo. *See Prod. Credit Ass'n of Mankato v. Buckentin*, 410 N.W.2d 820, 823 (Minn. 1987).

In opposing Cook's disqualification motion, appellants noted their willingness to stipulate to certain facts to obviate the need for attorney testimony. Cragg stated that he would stipulate to the foundation for the allegedly defamatory documents and would "stipulate to all information on which he has personal knowledge, including that he did have conversations with members of the press and that he did in fact provide the complaint to" a reporter. Cragg also stated, "The [c]ourt can even have [his] deposition transcript, wherein he states his reason for sending the complaint to the [reporter], placed into the record with [his] name redacted."

The supreme court has stated that "[i]f the evidence sought to be elicited from the attorney-witness can be produced in some other effective way, it may be that the attorney is not necessary as a witness." *Humphrey ex rel. State v. McLaren*, 402 N.W.2d 535, 541 (Minn. 1987). And "[i]f the lawyer's testimony is merely cumulative, or quite peripheral, or already contained in a document admissible as an exhibit, ordinarily the lawyer is not a necessary witness and need not recuse as trial counsel. *Id.*

Again, the parties in the underlying lawsuit were Trimble and Cook, and Cook's defamation claim was against Trimble. Although the district court found that Cragg and St. Amant had "exclusive personal knowledge of the facts related to drafting the complaint containing the allegedly defamatory statements and republishing of [Trimble's] statements to media outlets," this information is peripheral to the underlying claim, which concerned Trimble's allegedly defamatory statements about Cook. Moreover, appellants were willing to stipulate to the information sought by Cook. Finally, we discern no record support for the district court's statement that "practically every employee at [appellants' law firm] has had a hand in developing this case" and its related conclusion that every attorney at the firm would have a conflict of interest. For these reasons, we conclude that the disqualification of appellants and their law firm was an abuse of discretion.

In conclusion, we affirm the district court's award of a monetary sanction. But we reverse any purported sanction precluding appellants from relying on the litigation privilege as a defense to civil claims that Cook might file against appellants, as well as the district court's disqualification determination.

Affirmed in part and reversed in part.